Supreme Court, U.S.
FILED

031467 APR 19 2004

In the Supreme Court of the United States

Chase Manhattan Bank, as Trustee of IMC Home Equity Loan, Trust 1997.5 under Pooling and Servicing Agreement dated as of September 1, 1997,

Petitioner,

v.

Fannie Askew,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR A WRIT OF CERTIORARI

ROBERT A. PINEL
Stern, Lavinthal, Frankenberg & Norgaard, LLC
293 Eisenhower Parkway
Suite 300
Livingston, NJ 07035
(973) 740-0700

QUESTIONS PRESENTED

11 U.S.C. §362(a) provides for the automatic stay of all proceedings against a debtor upon the filing of a bankruptcy petition. 11 U.S.C. §362(b) identifies the actions that are excepted from the application of the automatic stay. 11 U.S.C. §362(d) provides procedures for parties to obtain judicial relief from the automatic stay. The questions presented are:

1. Whether a state court judgment is void when it is predicated on acts that are *void ab initio* because the acts violated the automatic stay and relief from the automatic stay has not been sought or obtained.

2. Whether a state court has authority to grant relief from the automatic stay.

3. Whether a state court has authority to create or recognize exceptions to the automatic stay if they are not specifically enumerated in 11 U.S.C. §362(b).

Rule 14.1(b) and Rule 29.6 Disclosure

Petitioner Chase Manhattan Bank is a party to this action in its own behalf. Petitioner is a wholly owned subsidiary of J.P.Morgan Chase & Company. J.P. Morgan Chase & Company issues stock to the public.

The nominal Respondent, Fannie Askew, the original defendant, did not participate in the appeal process.

There are no other parties to this proceeding.

TABLE OF CONTENTS

	Page
Opinion below	1
Jurisdiction.....	1
Constitutional and Statutory Provisions Involved.....	1
Statement.....	2
Reasons for Granting the Petition.....	2
Conclusion.....	5
Appendix A – Order of the New Jersey Supreme Court denying Petitioner's Petition for Certification, dated January 21, 2004.....	1a
Appendix B – Opinion of the Superior Court of New Jersey, Appellate Division, dated October 14, 2003.....	3a
Appendix C – Order of the Superior Court of New Jersey, Appellate Division denying Petitioner's Motion to Reconsider, dated November 3, 2003.....	13a
Appendix D – Order of the Superior Court of New Jersey, Chancery Division granting Motion to Vacate Sheriff's Sale, dated November 22, 2002.....	14a
Appendix E – Opinion transcript of the Superior Court of New Jersey, Chancery Division, dated November 22, 2002.....	16a

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Chase Manhattan Bank, as Trustee, respectfully petitions for a writ of certiorari to the Supreme Court of New Jersey, which denied discretionary review on a Petition for Certification, to review the judgment of the Superior Court of New Jersey, Appellate Division in this case.

OPINION BELOW

The opinion of the Appellate Division of the Superior Court of New Jersey (the "Appellate Division") (App., *infra*, 3a-12a) is reported at 363 N.J. Super. 334, 832 A.2d 956 (App. Div. 2003). The Appellate Division Order denying reconsideration (App., *infra*, 13a-14a) is unreported. The Order of the New Jersey Supreme Court denying Certification without opinion (App., *infra*, 1a–2a) is reported at 178 N.J. 453, 841 A.2d 91 (2004).

JURISDICTION

The judgment opinion of the Appellate Division was entered on October 14, 2003, (App., *infra*, 3a) and reconsideration was denied on November 3, 2003 (App., *infra*, 13a). The New Jersey Supreme Court denied Petitioner's Petition for Certification on January 21, 2004. (App., *infra*, 1a). This Courts' jurisdiction is invoked under 28 U.S.C. §1257(a). *See, e.g.*, *Lesser v. Gray*, 236 U.S. 70 (1915); *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300 (1911).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The full text of 11 U.S.C. §362 is set forth in the Appendix of the companion Petition, *Chase Manhattan*

Bank, as Trustee v. Bascom Corporation, et al., that is filed on the same date as this Petition.

STATEMENT

Petitioner files its petition for a writ of certiorari from a decision of the Appellate Division of the New Jersey Superior Court that vacated a sheriff's sale on a mortgage foreclosure judgment obtained by Petitioner (App., *infra*, 4a). The sheriff's sale was vacated because the Appellate Division ruled that another party's interest in the property, obtained by a tax foreclosure judgment, superceded and foreclosed Petitioner's mortgage interest (App., *infra*, 4a). The Appellate Division consolidated the two cases – Petitioner's mortgage foreclosure and the tax foreclosure – and issued one opinion (App., *infra*, 3a-12a). The current Petition is a companion to the Petition filed on the Appellate Division's decision affirming the tax foreclosure judgment in *Chase Manhattan Bank, As Trustee v. Bascom Corporation, et al.* It is filed to preserve Petitioner's interest in its mortgage, mortgage foreclosure judgment and sheriff's sale.

Petitioner's mortgage interest was set aside as a natural legal consequence of the Appellate Division's decision affirming the tax foreclosure judgment (App., *infra*, 4a). Under New Jersey law, Petitioner's mortgage interest was superceded and foreclosed when the Appellate Division ruled that the tax foreclosure judgment was not void for violating the automatic stay. If this Court grants the writ of certiorari in the companion case and reverses the Appellate Division – thereby vacating the tax foreclosure judgment – Petitioner's mortgage interest would be reinstated. Thus, Petitioner files this Petition to preserve rights that will be determined by the Court's action on the companion Petition.

REASONS FOR GRANTING THE PETITION

The issues presented by this and the companion Petition concern the preservation of the protections given to debtors and creditors by the automatic stay of 11 U.S.C. §362(a). Specifically, these Petitions place before the Court the question whether actions that are void for violating the automatic stay can be given effect by state courts in state court proceedings even if the actions are wholly void under federal bankruptcy law. The Petitions also place before the Court the issues of whether state courts can grant relief from the automatic stay or create exceptions to the automatic stay that are not identified in the bankruptcy code, 11 U.S.C. §362(b).

In this case, the Appellate Division recognized that actions taken by Bascom Corporation in its tax foreclosure action violated the automatic stay and were void. The actions were essential steps to obtaining the tax foreclosure judgment and the judgment could not have been obtained without these actions (App., *infra*, 10a-12a). However, while acknowledging that these essential steps were void, the Appellate Division ruled that the tax foreclosure judgment was valid. First, because the void predicate acts served their essential legal function of providing notice that the tax foreclosure action was proceeding. Second, because the judgment itself was entered after the bankruptcy petition that created the automatic stay was dismissed (App., *infra*, 11a). According to the Appellate Division, these two facts made the tax foreclosure judgment legally acceptable under the state law (App., *infra*, 11a).

The Appellate Division gave the void acts effect by avoiding bankruptcy law and policies. It did so by declaring foreclosure to be a unique state issue such that the state's

interest in foreclosure overrides the federal interest in enforcing the automatic stay by making *void ab initio* any acts taken in violation of the stay[1] (App., *infra*, 11a):

> [S]ince foreclosure law is a matter uniquely within the state's competence, the state is free to make its own determination as to the effect of the entry of a void interlocutory order, irrespective of the reason it is void.

Thus, the Appellate Division ruled – incorrectly – that it could reinstate an action that was *void ab initio* for violating the automatic stay (App., *infra*, 11a).

The Appellate Division's decision does not have any legal support and is contrary to established federal authority. The decision ignores a plethora of federal authority that these type acts are *void ab initio* and remain so unless retroactive relief from the automatic stay is obtained from the federal courts. The decision also disregards fundamental policies underlying bankruptcy law, as well as an essential purpose of the automatic stay – ensuring that one creditor does not obtain an unfair advantage over another creditor when a debtor files bankruptcy.

The Appellate Division also exercised powers that it does not have. By reinstating actions that were void for violating federal bankruptcy law, the Appellate Division effectively granted retroactive relief from the automatic stay, even though that power is reserved to the federal courts. The only other possible rationale for the decision is to find that the Appellate Division created an exception to the automatic stay that is not identified in 11 U.S.C. §

---

[1]In fact, the case relied on by the Appellate Division, BFP v. Resolution Trust, 511 U.S. 531, 544, 114 S.Ct. 1757, 1764-1765, 128 L.Ed. 2d. 556, 558 (1994), did not involve the automatic stay or bankruptcy law.

362(b). Again, that is a power the Appellate Division does not have. Whatever way the decision is interpreted, the Appellate Division exceeded its power and authority by reinstating the void acts.

This Court should grant a writ of certiorari to reconcile the conflict in interpretation of the bankruptcy code created by the Appellate Division's decision. This Court should also grant the writ of certiorari to rectify the plain errors in the Appellate Division's interpretation and application of federal bankruptcy law, as well as to preserve federal primacy in the bankruptcy realm. Finally, the Court should grant the writ of certiorari to preserve the fundamental polices underlying bankruptcy law and the mechanisms by which those policies are to be implemented and protected.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this Honorable Court grant its Petition for writ of certiorari and review the Order of the Appellate Division.

Respectfully submitted,

Robert A. Pinel, Esq.
Stern, Lavinthal, Frankenberg
& Norgaard, LLC
293 Eisenhower Parkway
Suite 300
Livingston, NJ 07039-1660
(973) 740-0700

APPENDIX A

SUPREME COURT OF NEW JERSEY

No. C-558 September Term 2003 55,462

BASCOM CORPORATION,
Plaintiff-Respondent,
v.
FANNIE ASKEW, MR. ASKEW,
HUSBAND OF FANNIE ASKEW, et al.,
Defendants,
and
CHASE MANHATTAN BANK, AS TRUSTEE
OF IMC HOME EQUITY LOAN TRUST 1997-5
UNDER THE POOLING and SERVICING
AGREEMENT DATED AS OF SEPTEMBER 1, 1997,
Defendant-Petitioner.

CHASE MANHATTAN BANK, ETC.,
Plaintiff,
v.
FANNIE ASKEW,
Defendant.

[Filed: January 21, 2004]

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-2485/3332-02 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 20th day of January, 2004.

/s/ Stephen W. Townsend
CLERK OF THE SUPREME
COURT OF NEW JERSEY

APPENDIX B

Superior Court of New Jersey, Appellate Division

NOS. A-2485-02, A-3332-02

BASCOM CORPORATION,
Plaintiff-Respondent,
v.
CHASE MANHATTAN BANK, as Trustee of IMC Home Equity Loan Trust 1997-5 under the Pooling and Servicing Agreement dated as of September 1, 1997,
Defendant-Appellant,
and
Fannie Askew, Mr. Askew, husband of Fannie Askew, and Delta Funding Corporation,
Defendants.

Chase Manhattan Bank, as Trustee,
Plaintiff-Appellant,
v.
Fannie Askew,
Defendant-Respondent.

[Filed: October 14, 2003]

Before Judges PRESSLER, CIANCIA and COLEMAN.
The opinion of the court was delivered by
PRESSLER, P.J.A.D.

These appeals, which arise out of the same series of transactions and which we consolidate for purposes of this opinion, have their genesis in a mortgage foreclosure proceeding brought by Chase Manhattan Bank (Chase) to foreclose the mortgage it had granted Fannie Askew on property owned by her in Paterson and in a tax foreclosure proceeding brought by Bascom Corporation to foreclose a tax sale certificate it held on the same property. The appeal under Docket No. A-2485-02T5 arises out of the tax foreclosure proceeding. Chase, a defendant in that action, appeals from an order of the Chancery Division denying its motion pursuant to *R.* 4:50-1 whereby it sought to have the tax foreclosure judgment set aside on the ground of voidness by reason of asserted violation of the bankruptcy automatic stay. The appeal under Docket No. A-3332-02T5 arises out of the mortgage foreclosure proceeding. Chase, the plaintiff in that action, appeals from an order of the Chancery Division entered on Askew's motion enjoining it from proceeding to sheriff's sale of the property because its interest therein had already been foreclosed. We affirm both orders appealed from.

The complaint in the tax foreclosure action was filed in May 2001 after Askew's failure to respond to Bascom's pre-action notice served and filed in compliance with N.J.S.A. 54:5-97. Chase was joined as the first mortgagee. [FN1] Both Chase and Askew were properly served. Neither answered, and the action proceeded entirely uncontested. Bascom obtained an order entered on September 4, 2001, duly served upon both Askew and Chase, fixing the amount, time and place of redemption. *See* N.J.S.A. 54:5-98. Neither responded or made any attempt to redeem. The final judgment foreclosing Askew and Chase from all right and equity of redemption and vesting title in fee simple in Bascom was entered on

October 24, 2001. Thereafter the property was sold to Bascom at a sheriff's sale. It appears that at least as of the date of the entry of the orders under appeal Bascom had not yet resold the property.

> FN1. Chase was joined as Trustee of IMC Home Equity Loan Trust 1997-5 under the Pooling and Servicing Agreement dated September 1, 1997. IMC Home Equity was the assignee of the original Askew mortgage and assigned by it to Chase under the Pooling Agreement. For convenience Chase is referred to as the mortgagee.

We turn now to the mortgage foreclosure action. Chase commenced its foreclosure action in June 2000. Final judgment of foreclosure was entered in December 2000. Chase did not immediately proceed to sheriff's sale because of Askew's intervening petition in bankruptcy. In the meantime, Bascom, in February 2001, purchased from the City of Paterson the tax sale certificate which was the subject of its foreclosure action. It further appears that in preparation for its mortgage foreclosure sale, Chase had ordered a title search and that its searcher missed Bascom's purchase of the tax sale certificate. Accordingly Chase's title company issued an indemnification to Chase in May 2001 which made no reference to it. Chase made no attempt to enforce its foreclosure judgment against Askew until October 2002, a year after Bascom's final judgment of foreclosure. A sheriff's sale was held on October 22, 2002, at which Chase was the highest bidder.

The proceedings now under review followed. Askew filed a pro se motion in the mortgage foreclosure action seeking to set aside Chase's sheriff's sale on the ground

that the property had already been sold. Chase then filed a motion in the tax foreclosure action seeking to set aside the tax foreclosure judgment under *R.* 4:50-1. The two motions were heard together by the Chancery Division, which granted Askew's and denied Chase's. We point out that if Chase's motion was properly denied, then patently Askew's motion was properly granted since the tax foreclosure judgment foreclosed Chase's interest in the property and its effect, as the Chancery judge concluded, was to require vacation of the mortgage foreclosure judgment.

The issue thus before us is whether the Chancery Division properly denied relief to Chase pursuant to *R.* 4:50-1. The basis of Chase's assertion of a right to relief is its claim that the tax foreclosure judgment was void because the order setting the amount, time and place of redemption had been entered during the period of a bankruptcy court automatic stay. 11 U.S.C.A. § 362(a). It is, indeed, undisputed that Askew's response to the tax foreclosure proceeding was the filing for protection under Chapter 13 of the Bankruptcy Code on July 16, 2001, a month after she was served with the tax foreclosure complaint. Although she noticed Chase, she did not notice Bascom who remained unaware of the bankruptcy proceeding. In any event, the automatic stay was in effect from that filing date until Askew's petition was dismissed on October 6, 2001, two days after entry of the order fixing the terms of redemption. Askew had, in fact, filed two subsequent petitions in bankruptcy, one on November 19, 2001, which was dismissed on January 11, 2002, and the next on March 25, 2002, which was dismissed on October 31, 2002. As noted, however, the final judgment of tax foreclosure was entered on October 24, 2001, after dismissal of the first petition and prior to filing of the second. There was consequently no impediment in terms

of the automatic stay to the entry of a valid final judgment of foreclosure.

Chase argues that because the order fixing the terms of redemption violated the automatic stay, the final judgment was void, entitling it to relief pursuant to *R.* 4:50-1(d), which authorizes the court to grant relief from a void judgment. In addressing Chase's argument, the court was of the view that it did not need to consider the effect of a violation, if any, of the bankruptcy automatic stay but rather that Chase should seek any remedy to which it might be entitled by reason thereof in the bankruptcy court. [FN2] Rather, the court viewed the matter before it as implicating questions of state law only and concluded that Chase was not entitled to relief under the court rule because of its failure to seek relief within a reasonable time. The court stated its reasons for so concluding as follows:

> FN2. We note that it is not only Chase which might have a remedy in the bankruptcy court. Bascom as well was free to seek from the bankruptcy court an annulment of the automatic stay if such is deemed necessary. *See* 11 U.S.C.A. § 362(d).

> 4:50-1 and 2 permits a motion to be filed for relief from a judgment but that motion has to be filed within a reasonable time. I find that this motion was not filed within a reasonable period of time. It was filed by a party that was properly served with the complaint, that defaulted, that did absolutely nothing to defend itself and did absolutely nothing to bring to Bascom's attention the

pendency of any bankruptcy action and did not file this motion until more than a year had passed after Bascom received its final judgment in foreclosure.

There has been absolutely no showing in this matter of any excusable neglect by Chase. It has been admitted that Chase received the summons and complaint in Bascom's tax foreclosure action and no evidence has been placed before me at all to explain why Chase did not defend itself in the tax foreclosure action. I find, therefore, that the conclusion is simply unavoidable, that Chase simply sat on its rights during Bascom's tax foreclosure action and withheld the bankruptcy issue during the entire course of that tax foreclosure case.

I also find that in that connection, that Bascom properly served Chase with the order setting amount, time and place of redemption and, therefore, they had knowledge of that application. And if they wanted to raise the defense of the bankruptcy stay at that time, they could have certainly raised that defense during the course of Bascom's tax foreclosure action.

Rather, as I said, rather than doing any of that, for whatever reason, Chase sat back and let Bascom obtain a judgment without alerting them to the bankruptcy action of which Bascom had no notice but which

> Chase was fully knowledgeable about. For those reasons, I conclude that Chase has unclean hands in this matter and has not shown grounds for relief under 4:50-1.
>
> Neglect and failure to act sooner are inexcusable on this record. Further, it has failed to show any grounds why it meets the standards for moving to vacate the tax foreclosure judgment under the applicable statute which is N.J.S.A. 54:5-87.

[11/22/02 Transcript, pgs. 15-17]

The record amply supports the judge's conclusions. We note that although a claim of voidness of the judgment under section (d) of *R.* 4:50-1 is not subject to the one-year limitation applicable to sections (a), (b), and (c) imposed by *R.* 4:50-2, that rule nevertheless requires all motions under *R.* 4:50-1 to be brought within a reasonable time. Since our decision in Garza v. Paone, 44 N.J.Super. 553, 556-560, 131 A.2d 32 (App.Div.1957), our courts have uniformly held that the reasonable-time requirement applies to judgments alleged to be void because of a failure of in personam jurisdiction. *See, e.g.,* Citibank, N.A. v. Russo, 334 N.J.Super. 346, 352, 759 A.2d 865 (App.Div.2000); Wohlegmuth v. 560 Ocean Club, 302 N.J.Super. 306, 312, 695 A.2d 345 (App.Div.1997); Berger v. Paterson Veterans Taxi Serv., 244 N.J.Super. 200, 204, 581 A.2d 1344 (App.Div.1990); Last v. Audubon Park Assoc., 227 N.J.Super. 602, 606-607, 548 A.2d 236 (App.Div.1988), *certif. denied,* 114 N.J. 491, 555 A.2d 613 (1989). We point out, however, that lack of personal jurisdiction is a waivable defense. *See, e.g.,* Hupp v. Accessory Distrib., Inc., 193 N.J.Super. 701, 711, 475 A.2d

679 (App.Div.1984). There is thus a conceptual symmetry in a rule which limits a challenge to a judgment on that ground to a reasonable time thereafter. That is to say, just as the defense to the action itself may be waived, so may the right to attack an ensuing judgment on that ground be deemed waived if not exercised within a reasonable time.

The difficulty here is that we are not dealing with a waivable defect, and hence the trial court should not, in our view, have declined to consider the consequence of the asserted defect. In our view, determination of the effect of the asserted violation was necessary to the ultimate decision. We decide that issue now on the basis of the undisputed record.

A state court judgment entered while the automatic stay is in place renders that judgment void ab initio, *see, e.g.,* Cho Hung Bank v. Ki Sung Kim, et al., 361 N.J.Super. 331, 339, 825 A.2d 566 (App.Div.2003), subject, however, to retroactive annulment by the bankruptcy court under 11 U.S.C.A. § 362(d). *See* In re Siciliano, 13 F.3d 748 (3d Cir.1994). Unless cured by annulment, the defect in the judgment is not waivable because it goes to the authority of the court to render the final judgment and is consequently more nearly akin to a non-waivable lack of subject matter jurisdiction. *See, e.g.,* Macysyn v. Hensler, 329 N.J.Super. 476, 481, 748 A.2d 591 (App.Div.2000). Our courts have not yet spoken directly to a non-waivable defect in the context of time constraints on a motion for relief brought pursuant to *R.* 4:50-1(d). It is, however, evident that if the final tax foreclosure judgment here had been entered while the automatic stay was in effect, the judgment would have been void ab initio and the issue of reasonable-time prerequisite for the attack under *R.* 4:50-1(d) would have been far from clear.

The point here, however, is that the final judgment of tax foreclosure was entered after the Chapter 13 petition was dismissed, and there was then no stay in effect. Consequently, it is not the final judgment that was void. What was void was the order fixing the terms of redemption, the only action in the proceeding that occurred while the stay was in effect. Hence, as we view the issue, the question is not whether the final judgment is void ab initio but rather whether a void interlocutory order, as a matter of federal bankruptcy law, automatically vitiates the final judgment as well. We conclude that it does not. We do not believe that federal law is offended when the final judgment itself is free of the impediment of the automatic stay. Tax foreclosure law, affecting as it does, the security of title to real estate involves "an essential state interest" and "the power to ensure that security 'inheres in the very nature of [state] government.' " BFP v. Resolution Trust, 511 U.S. 531, 544, 114 S.Ct. 1757, 1764-1765, 128 L.Ed.2d 556, 558 (1994). In our view, therefore, since foreclosure law is a matter uniquely within the state's competence, the state is free to make its own determination as to the effect of the entry of a void interlocutory order irrespective of the reason it is void.

As a matter of state law, we recognize that the order fixing the terms of redemption is a necessary step in the processing of a tax foreclosure action. But we think it plain that the function of the order was entirely fulfilled. Both the property owner and the mortgagee were appropriately, accurately, and fully apprised of the amount, time and place for redemption. Both chose to ignore the information. Neither has ever asserted that the reason for so choosing was a belief in or reliance on the voidness of the order. Chase's decision to ignore the order fixing the terms of redemption was, rather, in keeping with its overarching

decision to ignore the entire tax foreclosure proceeding for whatever reason it may have had. In sum, we are persuaded that in the circumstances here the validity of the final judgment was in no way impaired by the voidness, under federal bankruptcy law, of the interlocutory order. Accordingly plaintiff's attack under *R.* 4:50-1(d) fails. Beyond that and for the reasons expressed by the trial judge, we are satisfied that plaintiff is not entitled to relief under any other section of *R.* 4:50-1.

The order appealed from in each of the two appeals is affirmed.

APPENDIX C

Superior Court of New Jersey, Appellate Division

NO. A-3332-02

CHASE MANHATTAN BANK, as Trustee of
IMC Home Equity Loan Trust 1997-5 under the Pooling
and Servicing Agreement dated as of September 1, 1997,
Plaintiff-Appellant,
v.
Fannie Askew,
Defendant-Respondent.

[Filed: November 3, 2003]

Before Judges PRESSLER, CIANCIA and COLEMAN.

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 31 DAY OF OCTOBER, 2003, HEREBY ORDERED AS FOLLOWS: Appellant's motion for Reconsideration is DENIED.

FOR THE COURT

/s/
SYLVIA B. PRESSLER P.J.A.D

APPENDIX D

Superior Court of New Jersey, Chancery Division
Passaic County

DOCKET NO. F-10428-00

CHASE MANHATTAN BANK, as Trustee of
IMC Home Equity Loan Trust 1997-5 under the Pooling
and Servicing Agreement dated as of September 1, 1997,
Plaintiff,
v.
Fannie Askew,
Defendant.

[Filed: November 22, 2002]

ORDER GRANTING MOTION TO VACATE SHERIFF'S SALE

This matter having been opened to the motion of Fannie Askew, pro se, for an Order Vacating Sheriff's Sale Since Property was Sold Once, and the Plaintiff, by its attorney Bari J. Gambacorta, Esquire, of the firm of Farr, Burke, Gambacorta & Wright, P.C., having opposed the Motion;

AND the Court having considered the moving papers, and for reasons stated on the record on 11/22/02 in this case and a prior motion in Dt. No. F-8959-01.

IT IS on this 22nd day of November, 2002,

ORDERED and ADJUDGED that defendant's Motion for an Order Vacating Sheriff's Sale is GRANTED

/s/_____
Susan Reisner, P.J. Ch.

APPENDIX E

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, EQUITY PART
PASSAIC COUNTY
DOCKET NO. F-10428-00
APP. DIV. NO. A-

CHASE MANHATTAN BANK, as Trustee,
Plaintiff,
vs. TRANSCRIPT
FANNIE ASKEW, OF MOTIONS
Defendant.

- - - - - - - - - - - - - - - - -

DOCKET NO. F-8959-01
BASCOM CORPORATION,
Plaintiff,
vs.
FANNIE ASKEW,
Defendant.

- - - - - - - - - - - - - - - - -

Place: Passaic County Courthouse
77 Hamilton Street
Paterson, New Jersey 07505
Date: Friday, November 22, 2002

B E F O R E:
HONORABLE SUSAN L. REISNER, P.J.Ch.
TRANSCRIPT ORDERED BY:
AURA M. EGERMAN, ESQ. (Farr, Burke, Gambacorta & Wright, PC)
IRENE M. HAYES, CSR, RMR, CRR
Passaic County Courthouse
77 Hamilton Street
Paterson, New Jersey 07505

APPEARANCES:

SUSAN B. FAGAN-LIMPERT, ESQ.
(Robert A. Del Vecchio, LLC)
Attorney for Bascom Corp.

BARI J. GAMBACORTA, ESQ. (Farr, Burke, Gambacorta & Wright, PC)
Attorney for Chase Manhattan Bank.

Fannie Askew, Pro Se.

JOSE R. SANTIAGO, ESQ., Ass't County Counsel, Passaic County
Attorney for the Sheriff's Dept.

****

Colloquy 13

24 THE COURT: All right. Thank you, counsel.
25 I have considered the papers and this matter

Colloquy 14

1 is not without its complexities. However, this is a
2 motion to vacate a final judgment of tax foreclosure
3 which was entered on October 31st, 2001 in favor of
4 Bascom Corporation.The motion was not filed Chase by
5 Manhattan Bank, which was a served defendant in this
6 case, until November 12th, 2002, more than a year after
7 the final judgment of tax foreclosure was entered.
8 The gist of Chase Manhattan's motion is that
9 the judgment of tax foreclosure was allegedly obtained
10 in violation of the bankruptcy laws because at the time
11 that Chase, strike that, Bascom applied for the order
12 setting time and amount of redemption, there was still
13 a pending bankruptcy that had been filed by the
14 defendant Fannie Askew.
15 There is no dispute that Bascom was never
16 named as a creditor in that bankruptcy action, that
17 Bascom had no notice of that bankruptcy action. There
18 is also no dispute that Chase knew about the
19 bankruptcy, was named as a creditor in the bankruptcy
20 and certainly could have brought to the attention of
21 Chase, strike that, of Bascom that there was a pending
22 bankruptcy action if it believed that anything that
23 Bascom was doing in its tax foreclosure action was
24 improper.
25 So for the reasons I'm about to set forth,

I'm going to deny the motion that has been filed by Chase. I'm going deny that motion without prejudice to the right of Chase to apply through the bankruptcy court, if it wishes to do so, for relief from the judgment at issue here.

My denial of the motion is based on my conclusion that Chase has unclean hands, has failed to move timely to be relieved of this judgment under 4:50-1 and has also failed to move timely under the tax foreclosure statute, N.J.S.A. 54:5-87.

4:50-1 and 2 permits a motion to be filed for relief from a judgment but that motion has to be filed within a reasonable time. I find that this motion was not filed within a reasonable period of time. It was filed by a party that was properly served with the complaint, that defaulted, that did absolutely nothing to defend itself and did absolutely nothing to bring to Bascom's attention the pendency of any bankruptcy action and did not file this motion until more than a year had passed after Bascom received its final judgment in foreclosure.

There has been absolutely no showing in this matter of any excusable neglect by Chase. It has been admitted Chase received the summons and complaint in Bascom's tax foreclosure action and no evidence has

been placed before me at all to explain why Chase did not defend itself in the tax foreclosure action. I find, therefore, that the conclusion is simply unavoidable, that Chase simply sat on its rights during Bascom's tax foreclosure action and withheld the bankruptcy issue during the entire course of that tax foreclosure case.

I also find that in that connection, that Bascom properly served Chase with the order setting amount, time and place of redemption and, therefore, they had knowledge of that application. And if they wanted to raise the defense of the bankruptcy stay at that time, they could have certainly raised that defense during the course of Bascom's tax foreclosure action.

Rather, as I said, rather than doing any of that, for whatever reason, Chase sat back and let Bascom obtain a judgment without alerting them to the bankruptcy action of which Bascom had no notice but which Chase was fully knowledgeable about. For those reasons, I conclude that Chase has unclean hands in this matter and has not shown grounds for relief under 4:50-1.

Neglect and failure to act sooner are inexcusable on this record. Further, it has failed to

show any grounds why it meets the standards for moving to vacate the tax foreclosure judgment under the applicable statute which is N.J.S.A. 54:5-87.
In the event, I want to note, that Chase should apply to the bankruptcy court for relief, I just want it to be clear that my decision is based on state law. That is, I am not making a decision under the bankruptcy laws, rather, I am deciding that, under state law, Chase did not timely file or bring to the court's attention those defenses. That is, under Rule 4:50-2, Chase did not make its motion within a reasonable time nor did Chase make its motion within the time frames required by N.J.S.A. 54:5-87. So therefore, I am ruling that Chase is barred from raising the bankruptcy laws as a defense in this case because it waited too long under state law to raise those issues.
For all of those reasons, the motion is denied.
Now, to move onto Chase vs. Askew, this is essentially a motion by Miss Askew seeking to set aside the sheriff's sale. Essentially, it's duplicative because Bascom already owns the property.

****

Colloquy 28

19 THE COURT: All right.
20 I have considered the applications of the
21 parties. And once again, the relationship to the
22 parties are a little bit complicated here. But given
23 the ruling that I have already made, I am constrained
24 to conclude that Chase sought to have something sold
25 by the sheriff that already belonged to Bascom and
that,

Colloquy 29

1 therefore, the sale must be set aside. Because,
2 through no fault of the sheriff's office, they sold
3 something that didn't belong to the person that was
4 instigating the sale. The property had belonged to
5 Bascom since October of 2001. For that reason, the
6 sheriff's sale must be vacated.

****

CERTIFICATION

I, IRENE M. HAYES, C.S.R., License Number XI00770, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript to the best of my knowledge and ability.

/s/ _____ 12/9/02

Irene M. Hayes, C.S.R. Date
Official Court Reporter
Passaic County Courthouse
Paterson, New Jersey